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**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Application Number: 10/583,055
Filing Date: May 08, 2007
Appellant(s): KOEHLER ET AL.

Armin Koehler et al
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 11/24/2009 appealing from the Office action mailed 05/26/2009.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct. No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

| | | |
|---|---|---|
| 6236922 | Andres | 05/22/2001 |
| 5014810 | Mattes et al | 05/14/1991 |
| 6459366 | Foo et al | 10/01/2002 |
| 2003/0197356 | Fischer | 10/23/2003 |

6549836 Yeh et al 04/2003

**(9) Ground of Rejection**

The following ground(s) of rejection are applicable to the appealed claims

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(**a**) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims **11, 13, 15 and 20** are rejected under 35 U.S.C. 103(**a**) as being unpatentable over **Andres (Patent Number: 6236922) in view of Mattes et al (Patent Number: 5014810)**.

Regarding claim **11**: Andres discloses a method for activating at least one personal protection device as a function of at least one signal derived from at least one acceleration sensor, the method comprising:

using a forward displacement as the at least one signal **(see at least col. 3, lines 14-15)**.

comparing the at least one signal to at least one threshold value surface, which is set as a function of a velocity decrease and a deceleration (see **at least, fig. 4, fig. 5, col. 3, lines 4-20 and col. 5, lines 1-25**).

Andres does not explicitly disclose activating the personal protection device as a function of the comparison. **However, Mattes et al discloses this limitation, see fig. 5,. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the**

**teaching of Mattes et al in Andres invention to activate the passenger restraint more accurately.**

Regarding claim **13**: The combination of Andres and Mattes et al disclose the method according to claim 11, modifying the threshold value surface as a function of at least one of (a) a signal of an applied external sensor system and (b) at least one characteristic value **(see at least Andres, fig. 1 and col. 2, lines 10-32)**.

Regarding claim **15**: The combination of Andres and Mattes et al disclose the method according to claim 11, further comprising setting the threshold value surface as a function of a crash phase **(see at least Mattes, col. 6, lines 33-50)**.

Regarding claim **20**: The combination of Andres and Mattes et al disclose the method according to claim 11, wherein at least one of the steps is performed by a control unit **(see Andres, fig. 1)**.

3. Claim **12** is rejected under 35 U.S.C. 103(**a**) as being unpatentable over **Andres (Patent Number: 6236922) in view of Mattes et al (Patent Number: 5014810) and further view of Foo et al (Patent Number: 6459366) and Fischer (Pub. No.: US 2003/0197356)**.

Regarding claim **12**: The Combination of Andres and Mattes et al disclose the method according to claim 11, further comprising:

The combination of Andres do not explicitly disclose comparing the forward displacement to a first threshold value which is set as a function of the velocity decrease. **However, Foo et al discloses this limitation, see fig. 5 and col. 2, lines 1-9. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate**

**the teaching of Foo et al in the combination Andres and Mattes et al for a better control of occupant protection devices.**

The combination of Andres and Mattes et al in view of Foo et al do not explicitly disclose comparing the forward displacement to a second threshold value which is set as a function of the deceleration; and simulating the threshold value surface as a function of the comparisons. **However, Fischer discloses this limitation, see par. 0047. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teaching of Fischer in the combination Andres and Mattes et al in view of Foo et al for a better control of occupant protection devices to discriminate between events for deploying airbags more accurately.**

4. Claim 14 is rejected under 35 U.S.C. 103(**a**) as being unpatentable over **Andres (Patent Number: 6236922) in view of Mattes et al (Patent Number: 5014810) and further view Yeh et al (Patent Number: 6549836)**.

Regarding claim **14**: The Combination of Andres and Mattes et al disclose the method according to claim 11, but do not explicitly disclose modifying the threshold value surface as a function of at least one of a crash type recognition and a crash severity recognition. **However, Yeh et al discloses this limitation, see abstract and col. 8, lines 8-21. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teaching of Yeh et al in the combination Andres and Mattes et al to improve the occupant safety.**

5. Claims 16-19 are rejected under 35 U.S.C. 103(**a**) as being unpatentable over **Andres (Patent Number: 6236922) in view of Mattes et al (Patent Number: 5014810) and further view of Foo et al (Patent Number: 6459366) and Fischer (Pub. No.: US 2003/0197356)**. Regarding claims **16-19**: The combination of Andres and Mattes et al do not explicitly. **However, Foo et al discloses this limitation, see below. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teaching of Foo et al in the combination Andres and Mattes et al for a better control of occupant protection devices.**

Regarding claim **16**. The method according to claim 15, wherein, if a predefined velocity decrease is reached, a first number indicating whether the forward displacement has reached the threshold value surface is awaited **(Foo et al discloses this limitation, see fig. 5)**.

Regarding claim **17**. The method according to claim 11, further comprising comparing at least one of the forward displacement and the velocity decrease with a third threshold value **(Foo et al discloses this limitation, see fig. 7)**.

Regarding claim **18 and 30**. The method according to claim 17, wherein the third threshold value is constant over time **(Foo et al discloses this limitation, see fig. 7)**.

Regarding claim **19**. The method according to claim 11, further comprising estimating the forward displacement using an expansion into a series **(Foo et al disclose this limitation, see**

**fig. 7).**

**Claims 21-30 are rejected using the same prior arts and same rationales as claims 12-20.**

***(10) Response to Arguments***

The examiner summarizes the various points raised by the appellant and addresses them individually.

As per appellant's arguments filed on 06/12/2009, the appellant argues:

**Argument 1**: There must be some suggestion or motivation to modify or combine reference teaching. The teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure.

**In response to Argument 1**: The examiner respectively disagrees. The argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been extremely advantageous to combine the prior art of record for the purposes stated in the detailed action below. In addition, KSR forecloses the argument that a **specific** teaching, suggestion, or motivation is required to support a finding of obviousness. See the recent Board decision *Ex parte Smith*, --USPQ2d ,slip

op. at 20, (Bd. Pat. App. & Interf. June 25, 2007) (citing *KSR*, USPQ2d at 1396) (available at https://www.uspto.gov/web/offices/dcom/bpai/prec/fd071923.pdf). Therefore the combination of the prior art of record still meets the scope of the limitations as currently claimed.

**Argument 2**: The prior art do not disclose nor suggest the feature of "*comparing the at least one signal to at least one threshold value surface, which is set as a function of a velocity decrease and a deceleration* ," as recited in claim 11, 13, 15 and 20.

**In response to Argument 2**: The examiner respectively disagrees. Examiner respectively disagrees. Applicant is reminded that claims must be given their broadest reasonable interpretation. **Claim 1 recites the following terms "a forward displacement, velocity and deceleration". The claim fails to specify if the forward displacement correspond to a passenger displacement, vehicle displacement or any other object displacement. Also, it's not clear how velocity decrease is different than deceleration. Acceleration is the rate change of velocity. In addition, the claim fails to specify if the terms velocity decrease and deceleration correspond to the vehicle itself or any other object. Andres deploys airbag by detecting the velocity, deceleration and occupant displacement. Therefore, prior arts cited disclose the claims limitations as presently written** (at least see Andres col. 9, lines 4-15; col. 4 lines 58-67 – col. 5 lines 1-6.

**Argument 3**: The prior arts do not disclose nor suggest "comparing a forward displacement to a forward displacement threshold value which is set as a function of the velocity decrease ," as recited in claim 12.

**In response to Argument 3**: . Examiner respectively disagrees. Applicant is reminded that claims must be given their broadest reasonable interpretation. At least Foo discloses this

limitation. Foo discloses The controller (24) determines a crash velocity value and a crash displacement value based on the crash sensor signal. The controller (24) has a threshold value functionally related to the determined crash displacement value. The controller (24) controls actuation of the actuatable headrest device (44, 48) in response to the determined crash velocity value relative to the threshold value, at least see abstract and col. 2 lines 10-19.

**Argument 4**: *According to page 6 of the Final Office Action, claims 21 to 30 were "rejected for using the same prior arts and same rationales as claims 12- 20" -- without any other specific reasoning.* It is believed that these rejections are improper and cannot even be properly framed for appeal, since the Examiner has provided nothing more than omnibus rejections of claims 21 to 30.

**In response to Argument 4**: Claims 21-30 includes the same limitations as claims 12-20. that have been rejected and addressed by examiner. Therefore, the same rejection, rational and reasoning is applied to claims 12-20 is applied to claims 21-23

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/H. A. A./

Examiner of Art Unit 3663

Conferees:

Thomas G. Black /tgb/

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Primary Examiner, Art Unit 3663